RECEIVED
OCT 12 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 82-5534

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

Supreme Court, U.S.
FILED
OCT 6 1982
Alexander L. Stevas, Clerk

WILLIAM MELVIN WHITE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

CRAIG S. BARNARD
Chief Assistant Public Defender

RICHARD H. BURR, III
Assistant Public Defender

Counsel for Petitioner

INDEX TO APPENDIX

	PAGE
Opinion of the Supreme Court of Florida, April 1, 1982	1a-4a
Order of the Supreme Court of Florida denying rehearing and modifying its prior opinion, dated July 8, 1982	5a
Opinion of the Supreme Court of Florida, dated July 8, 1982	6a-8a
Section 921.141, Florida Statutes (1977)	9a-10a

Supreme Court of Florida

No. 55,875

WILLIAM MELVIN WHITE, Appellant,

v.

STATE OF FLORIDA, Appellee.

[April 1, 1982]

Per Curiam.

William Melvin White appeals his conviction of first-degree murder and sentence of death. We affirm.

White was a member of a Kentucky chapter of the Outlaws, a motorcycle gang, but was visiting the Orlando chapter. A group of the Outlaws, accompanied by some girl friends, visited an Orlando nightclub where they met Gracie Mae Crawford. Gracie Mae accompanied some of the Outlaws back to their Orlando clubhouse. Soon after returning to the clubhouse, White retired to a bedroom with his girl friend. Sometime thereafter White was called by Richard DiMarino who stated that Crawford liked blacks and that they had to teach her a lesson. White dressed and went into the kitchen area where he joined DiMarino and Guy Lloyd Smith in severely beating Crawford. Whether DiMarino or White led the assault is unclear, but one witness testified of White's hitting Crawford with his fist and knocking her to the floor. After the beating, DiMarino and White placed Crawford in the middle of the front seat of White's girl friend's car. White started driving but along the way stopped the car and DiMarino drove the car to the end of a deserted road. The victim, White and DiMarino had done a lot of drinking that evening, but White's girl friend

testified that he knew what he was doing.[1] After they stopped the car, DiMarino and White pulled Crawford from the car, passed her over a barbed wire fence, and laid her on the ground. White then straddled her, took out his knife, stabbed her fourteen times and slit her throat. He handed the knife to DiMarino who also cut her throat. Crawford died as a result of the wounds inflicted upon her.

While leaving the area White and DiMarino ran out of gas at the Seaworld parking lot and were later identified by Seaworld security guards who had given them gas. White and DiMarino went back and picked up the body of the deceased and thereafter discarded it at a different place. The body was discovered that afternoon.

On appeal White raises eight issues going to the trial and his conviction and also raises the propriety of the death penalty.[1] Each of the eight points concerns claims of trial error. After reviewing the record, we find no merit in any of the points raised and do not feel that any warrant or require specific discussion. Viewed in the context in which they were made, the prosecutor's comments were proper and reasonable and did not trespass upon the defendant's rights to a fair trial. Spencer v. State, 133 So.2d 729 (Fla. 1961), cert. denied, 369 U.S. 880 (1962). The judge's handling of the jury and the witnesses was proper, and there was no introduction of improper evidence. We have reviewed the evidence for its sufficiency and have searched the record for other error. We find the evidence sufficient to convict and can discern no reversible error.

The jury unanimously recommended the imposition of the

---

[1] The first six issues deal with comments by the prosecutor in his closing argument: (1) threats to the life of the key prosecution witness and his family; (2) alleged solicitation of a conviction because the codefendant had been convicted; (3) an alleged comment on the defendant's failure to testify; (4) the key prosecution witness' ability to pass or fail a polygraph test; (5) errors for stating passages from the Bible; (6) an alleged comment on the state's belief in the defendant's guilt. The last three issues concern the trial court's instructions to the key prosecution witness, alleged errors in the collective voir dire, and alleged error in the sentencing.

death sentence. The trial judge found three aggravating factors and recited his reasons therefor.[2] No testimony was presented of any mitigating circumstances, statutory or nonstatutory. The findings of the trial judge are supported by the evidence, and his judgment should not be disturbed. In affirming the sentence we are fully aware that DiMarino escaped with a conviction of a third-degree murder. While this is fortunate for him, it does not require the reduction of White's sentence. White was the executioner, and his sentence is warranted.

It is so ordered.

SUNDBERG, C.J., ADKINS, BOYD, OVERTON, ALDERMAN and McDONALD, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

---

[2] The trial judge found that:

> a) The murder of Gracie Mae Crawford was committed while the Defendant was engaged in the commission of a kidnapping. The evidence is clear that Gracie Mae Crawford was severely beaten to the extent of causing brain damage. Further, she was quite intoxicated. She was "helped" from the kitchen to the car by Richard DiMarino. She asked to be taken home. She was placed between DiMarino and White and, against her will, forcefully and secretly confined for the purpose of murdering her in a remote area. Circumstance "a" is applicable.
>
> * * * *
>
> g) The murder of Gracie Mae Crawford was committed to disrupt or hinder the enforcement of laws, i.e., to escape detection and punishment for the crime of aggravated battery. See circumstance (a) above. Circumstance "g" is applicable.
>
> h) The murder was especially heinous, wicked, and cruel. The victim, beaten and intoxicated, was quite helpless and unable to defend herself from the Defendant's conscienceless, willful, purposeful, and savage attack. The Defendant repeatedly struck the victim in the chest and face with a knife causing fourteen separate puncture wounds, at least three of which would have alone been fatal. To insure the death of his victim, the Defendant then slit her throat. She died as a result of planned, methodical, cruel, wanton, malicious, atrocious, conscienceless, pitiless crime unnecessarily tortuous to the victim. Without further elaboration, circumstance "h" is applicable.

An Appeal from the Circuit Court in and for Orange County,

Frederick Pfeiffer, Judge - Case No. CR78-1340 Div. "12"

Richard L. Jorandby, Public Defender; Craig S. Barnard, Chief Assistant Public Defender; and Richard B. Greene, Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, Florida,

for Appellant

Jim Smith, Attorney General; and Joy B. Shearer, Mark Horn and Sharon Lee Stedman, Assistant Attorneys General, West Palm Beach, Florida,

for Appellee

Supreme Court of Florida

THURSDAY, JULY 8, 1982

WILLIAM MELVIN WHITE, Appellant,	)	
vs.	)	CASE NO. 55,875
STATE OF FLORIDA, Appellee.	)	Circuit Court Case No. CR78-1840 Div. "12" (Orange County)

The opinion filed April 1, 1982, has been revised on page three. The motion for rehearing, having been considered in light of the revised opinion, is hereby denied.

The Application for Stay of Judgment and Mandate filed by attorney for appellant is granted and the proceedings in this Court and the Ninth Judicial Circuit in and for Orange County, Florida, are hereby stayed to and including August 9, 1982, to allow appellant to seek review in the United States Supreme Court and obtain any further stay from that Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: Janie L. Bentley
Deputy Clerk

JB

cc: Hon. William D. Gorman, Clerk
Hon. Frederick T. Pfeiffer, Judge
Mr. Craig S. Barnard, Chief Assistant Public Defender
Ms. Sharon Lee Stedman, Assistant Attorney General

William Melvin WHITE, Appellant,

v.

STATE of Florida, Appellee.

No. 55875

Supreme Court of Florida

April 1, 1982

Rehearing Denied July 8, 1982

Defendant was convicted before the Circuit Court, Orange County, Frederick Pfeiffer, J., of first-degree murder and was sentenced to death, and he appealed. The Supreme Court held that: (1) prosecutor's comments were proper and reasonable, (2) judge's handling of jury and witnesses was proper, (3) evidence was sufficient to convict, (4) findings of aggravating factors were supported by evidence, and (5) fact that accomplice escaped with conviction of third-degree murder did not require reduction of defendant's sentence.

Affirmed.

1. Criminal Law ⇐713

Prosecutor's closing argument comments in first-degree murder prosecution were proper and reasonable and did not trespass upon defendant's rights to fair trial.

2. Criminal Law ⇐338(1), 653(9)

Trial judge's handling of jury and witnesses in first-degree murder prosecution was proper and there was no introduction of improper evidence.

3. Homicide ⇐253(1)

Evidence in first-degree murder prosecution was sufficient to convict.

4. Homicide ⇐354

Trial judge's findings of aggravating factors in first-degree murder prosecution were supported by evidence and would not be disturbed.

5. Homicide ⇐354

Fact that defendant's accomplice was convicted of third-degree murder did not require reduction of death sentence imposed on defendant for first-degree murder.

Richard L. Jorandby, Public Defender, Craig S. Barnard, Chief Asst. Public Defender, and Richard B. Greene, Asst. Public Defender, Fifteenth Judicial Circuit, West Palm Beach, for appellant.

Jim Smith, Atty. Gen., and Jay B. Shearer, Mark Hicks and Sharon Lee Stedman, Asst. Attys. Gen., West Palm Beach, for appellee.

PER CURIAM.

William Melvin White appeals his conviction of first-degree murder and sentence of death. We affirm.

White was a member of a Kentucky chapter of the Outlaws, a motorcycle gang, but was visiting the Orlando chapter. A group of the Outlaws, accompanied by some girl friends, visited an Orlando nightclub where they met Gracie Mae Crawford. Gracie Mae accompanied some of the Outlaws back to their Orlando clubhouse. Soon after returning to the clubhouse, White retired to a bedroom with his girl friend. Sometime thereafter White was called by Richard DiMarino who stated that Crawford liked Marks and that they had to teach her a lesson. White dressed and went into the outdoor area where he joined DiMarino and Gary Lynn Smith in severely beating Crawford. Whether DiMarino or White hit the fatal punches, but one witness testified of White's hitting Crawford with his fist and kicking her to the floor. After the beating, DiMarino and White placed Crawford in the middle of the front seat of White's girl friend's car. White started driving but along the way stopped the car and DiMarino drove the car to the end of a deserted road. (The victim, White and DiMarino had done a lot of drinking that evening, but White's girl friend testified that he knew what he was doing.) After they stopped the car, DiMarino and White

pulled Crawford from the car, pass[ed] her over a barbed wire fence, and [let] her to the ground. White then straddled her, took out his knife, stabbed her fourteen times and cut her throat. He handed the knife to DiMarino who also cut her throat. Crawford died as a result of the wounds inflicted upon her.

While leaving the area White and DiMarino ran out of gas at the Sunshine Parkway lot and were later identified by Sunshine security guards who had given them gas. White and DiMarino went back and picked up the body of the deceased and thereafter discarded it at a different place. The body was discovered that afternoon.

[1–3] On appeal White raises eight issues going to the trial and the conviction and also raises the propriety of the death penalty.[1] Each of the eight points raises the claims of trial error. After reviewing the record, we find no merit in any of the points raised and do not feel that any were

1. The first six issues deal with restraints by the prosecutor in his closing argument, (2) Threats to the life of the key prosecution witness and his family, (2) alleged substitution of a conviction because the co-defendant had been convicted, (3) an alleged comment on the defendant's failure to testify, (4) the key prosecution witness' ability to pass or fail a polygraph test, (5) errors for which prejudice from the whole, (6) an alleged comment on the state's belief in the defendant's guilt. The last three issues concern the trial court's instructions to the key prosecution witness, alleged errors in the collective sum due, and alleged error in the sentencing.

2. The trial judge found that

> d) The murder of Grace Mae Crawford was committed while the Defendant was engaged in the commission of a kidnapping. The evidence is clear that Grace Mae Crawford was severely beaten to the extent of causing brain damage. Further, she was quite intoxicated. She was "helped" from the kitchen to the car by Richard DiMarino. She asked to be taken home. She was placed between DiMarino and White and against her will, forcefully and wrongfully confined for the purpose of murdering her in a remote area. Circumstance "d" is applicable.
>
> e) The murder of Grace Mae Crawford was not committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody. Although it may be argued that the crime was committed for the purpose of avoiding or preventing a lawful arrest, [illegible] the circumstances under which they were made, the [illegible] were [illegible] upon the defendant's right to [illegible] Spinkellink v. [illegible], cert. denied, [illegible] 1978, 1 L.Ed.2d 283 (1978). The jury's finding of the jury [illegible] was proper, and there [illegible] to support evidence. We have reviewed the evidence for the [illegible] and have concluded the record for [illegible]. We find the evidence sufficient to support [illegible] to prove the crime.

[4, 5] The jury unanimously recommended the imposition of the death penalty. The trial judge found three aggravating factors and refused to consider [illegible] for.[2] No testimony was presented of any mitigating circumstances [illegible] statutory, but the trial judge found the

> purpose of avoiding or preventing a lawful arrest. In making [illegible] officers [illegible] concerning the commission of an aggravated battery by Smith and his co-defendants and [illegible] procedures and further that the murder was accomplished to eliminate the victim as their crime. The Court has taken the consideration of this circumstance most favorable to the defendant and finds that the fact would be more appropriate under circumstance [illegible].
>
> * * * * * *
>
> e) The murder of Grace Mae Crawford was committed to disrupt or hinder the enforcement of laws or to escape detention and punishment for the crime of aggravated battery. See circumstance (e) above. Circumstance "e" is applicable.
>
> f) The murder was especially heinous, wicked, and cruel. The victim, beaten and intoxicated, was quite helpless and unable to defend herself from the Defendant's coercive actions, willful purposeful, and savage attack. The Defendant repeatedly struck the victim on the chest and face with a knife causing fourteen separate puncture wounds, at least three of which would have alone been fatal. To insure the death of his victim, the Defendant then slashed her throat. She died as a result of planned, methodical, cruel, wanton, malicious, atrocious, conscienceless, pitiless crime unnecessarily tortuous to the victim. Without further elaboration, circumstance "h" is applicable.

mitigating circumstance of no prior felony convictions. We are satisfied that the trial judge weighed the aggravating circumstances against this and any other mitigating circumstances in pronouncing sentence. The findings of the trial court are supported by the evidence, and the judgment should not be disturbed. In affirming the sentence we are fully aware that Mr. White is charged with a conviction of first degree murder. While this is for him, it does not require the White's sentence. White was the tioner, and his sentence is

It is so ordered.

SUNDBERG, J., and ARIAN, OVERTON, WIDEMAN, DONALD, JJ., concur.

CHAPTER 921

SENTENCE

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If through impossibility or inability the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special jury as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (6) and (7). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statement. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the constitutions of the United States or of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist as enumerated in subsection (6), which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances, as enumerated in subsection (6), to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose

sentence of life imprisonment in accordance with s. 775.082.

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—[illegible]